



Scottish Association of Law Centres

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## **Advice and assistance civil legal aid financial eligibility criteria**

### **Briefing paper – September 2024**

#### **Summary**

This briefing paper discusses the need to reform the financial eligibility criteria for advice and assistance civil legal aid.

Low eligibility thresholds mean that a significant proportion of people of limited means in Scotland are ineligible for advice and assistance. The low thresholds are a barrier to access to justice.

For an individual to be eligible for advice and assistance, they must have disposable income of no more than £245 per week and disposable capital of no more than £1,716.

The thresholds have been static since 2011. The failure to adjust them for inflation means they have been significantly reduced in real terms.

The income threshold is far below what a person over 21 would earn from working full-time at the minimum wage (£356.01 in take home pay per week). The capital threshold is almost a tenth of the equivalent capital threshold for universal credit (which is £16,000).

We recommend that the Scottish Government increases the advice and assistance thresholds to match the thresholds for civil legal aid. Making this change would significantly improve access to justice.

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## **About the Scottish Association of Law Centres**

The [Scottish Association of Law Centres](#) (SALC) is the national body for the not-for-profit legal sector in Scotland, and in particular, for community-based law centres across Scotland.

We are an independent group, established to support our members to ensure the provision of free and accessible legal and related services to people, and communities, especially those who are marginalised and excluded, and who experience discrimination and disadvantage.

Our members are law centres based on communities of geography and location, as well as not-for-profit legal practices that focus on communities of interest.

We strive to be leaders in good practice, to advocate for justice and the promotion and protection of human rights, to respond effectively to the needs of the not-for-profit legal sector and to maintain and strengthen the collaborative networks that allow us to continue to provide holistic support our communities.

We aim to:

- Advance and secure the interests of a thriving community legal sector in Scotland.
- Promote equal access to justice for everybody in Scotland.
- Strive to ensure that geographic/sectoral/structural areas of unmet public legal need in Scotland are provided for by SALC members or partners.

## **Introduction**

1. This briefing discusses the need to reform the financial eligibility criteria for advice and assistance civil legal aid ('A&A') in Scotland.
2. Paying privately for legal advice in civil matters is likely unaffordable for many people of limited and average means in Scotland. Private fees charged by solicitors are often in excess of £200 per hour.<sup>1</sup>
3. High quality and timely legal advice is essential for ensuring access to justice and ensuring that disputes are resolved as soon as possible.
4. The A&A financial eligibility thresholds are very low, which means that A&A is not available for many people who likely cannot otherwise afford to pay privately for legal advice. The A&A thresholds must be reviewed and amended urgently by the Scottish Ministers to ensure that access to civil legal advice is available according to need.
5. This briefing is set out as follows. It first explains the A&A financial eligibility thresholds. Second, it considers the adequacy of the thresholds relative to inflation, the national minimum wage and to similar thresholds for universal credit and civil legal aid. It concludes with recommendations to reform the thresholds.

## **Introduction to A&A**

6. A&A is defined in the Legal Aid (Scotland) Act 1986 ('the 1986 Act'). Section 6(1) defines 'advice and assistance' as including the following:
  - Oral or written advice provided to a person by a solicitor (or by counsel) on the application of Scots law to circumstances which may have arisen in relation to the person seeking the advice; or
  - Oral or written advice provided by an adviser; or
  - Assistance provided to a person by a solicitor.

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<sup>1</sup> The Law Society of Scotland's 2017 Financial Benchmarking report found that, "the most common hourly rate for civil court work was £150---£200". Law Society of Scotland, 'Financial Benchmarking 2017: Report' (Law Society of Scotland, 2017), p67.

7. A&A is distinct from civil legal aid, which broadly applies to legal representation provided by a solicitor in litigation.<sup>2</sup>

### **A&A financial thresholds**

8. An individual's income and capital must be below specified thresholds to qualify for A&A.
9. For **income**, an individual must have either a 'disposable income' of less than £245 per week or be in receipt of certain means-tested social security benefits to qualify for A&A.<sup>3</sup> The £245 per week disposable income threshold equates to income of £1,061.67 per month or £12,740 per year.
10. For **capital**, an individual must have 'disposable capital' below £1,716 to qualify for A&A.<sup>4</sup> Disposable capital refers to savings and anything else of value owned by an individual (and their partner, if appropriate). This excludes an individual's main residence, their car and the value of any disputed assets which are part of the subject matter of the advice.
11. The terms 'disposable income' and 'disposable capital' are defined in Section 42 of the 1986 Act as follows:

*(1) In this Act "disposable income" or "disposable capital" in relation to any person means his income or, as the case may be, the amount of his capital, after making such deductions and allowances as regulations made under this section may prescribe—*

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<sup>2</sup> Civil Legal Aid is defined in section 13(2) of the 1986 Act as 'representation by a solicitor and, [...] by counsel in any proceedings [...] and includes [...] assistance as is usually given by solicitor or counsel in the steps preliminary to or incidental to proceedings, or in arriving at or giving effect to a settlement to prevent them or bring them to an end.'

<sup>3</sup> Section 8 of the 1986 Act. The means-tested social security benefits are set out in Section 8(b): universal credit, income support, income-based jobseeker's allowance or income-related employment and support allowance.

<sup>4</sup> Ibid.

*(a) in respect of maintenance of dependants, interest on loans, income tax, rates, rent and other matters for which that person must or reasonably may provide;*

*(b) to take account of the nature of his resources, and does not include the subject matter of the dispute.*

...

*(3) Except in so far as regulations made under this section otherwise provide, the resources of a person's spouse shall be treated for the purposes of this section as that person's own resources, and such regulations may also make provision, in relation to minors and pupils and other special cases, for taking into account the resources of other persons.*

12. The financial thresholds for A&A are set within primary legislation. The 1986 Act defines A&A and sets the eligibility conditions for A&A.<sup>5</sup>

13. The financial thresholds for A&A were last amended in 2011 by the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 ('the 2011 Regulations'). The 2011 Regulations came into force on 11 April 2011.

14. The Scottish Ministers have the power to amend the A&A financial thresholds by making Regulations.<sup>6</sup>

### **Adequacy of the thresholds**

#### ***Failure to adjust for inflation***

15. The A&A financial thresholds have not changed since 2011. The failure to adjust for inflation means that the thresholds have been significantly reduced in real terms.

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<sup>5</sup> Ibid, Sections 6 and 8.

<sup>6</sup> Section 36 of the 1986 Act gives the Scottish Ministers the power to make Regulations regarding financial thresholds.

16. Using the Bank of England's inflation calculator,<sup>7</sup> if the current disposable income threshold of £245 per week was adjusted for inflation since 2011 to the present date, it would be £351.24.

17. The inflation-adjusted figure for disposable capital is £2,460.08 (the current disposable capital threshold is £1,716).<sup>8</sup>

***Disposable income threshold relative to the national minimum wage***

18. The national minimum wage for persons over the age of 21 is £11.44 per hour, and for persons between 18 and 20 years is £8.60 per hour.

19. A full-time working week of 35 hours per week paid at the minimum wage for a person over 21 would provide take home pay of £356.01 per week. That weekly income exceeds the disposable income threshold for A&A (£245 per week) by a considerable margin.

20. The A&A £245 weekly disposable income threshold equates to a person aged over 21 working around 21 hours per week (i.e. part-time).

***Disposable capital threshold relative to universal credit***

21. In order to qualify for universal credit ('UC'), a person must be aged 18 or over, be under State Pension age and "have no more than £16,000 in money, savings or capital".<sup>9</sup>

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<sup>7</sup> <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator> (accessed 28 June 2024).

<sup>8</sup> It is also notable that the original A&A eligibility limits which were set in the 1986 Act were more generous than the current eligibility limits (once adjusted for inflation). Section 8 of the 1986 Act set limits of £114 per week for disposable income and disposable capital of £800. Adjusted for inflation these figures are £330.94 per week for disposable income and £2,322.40 in disposable capital.

<sup>9</sup> See <https://www.gov.uk/universal-credit/eligibility> and Regulation 18 of the Universal Credit Regulations 2013. Universal credit payments are reduced for those with capital between £6,000 and £16,000, see <https://www.gov.uk/guidance/universal-credit-money-savings-and-investments>.

22. The capital threshold for UC is significantly higher than the equivalent threshold for A&A (£1,716). The UC capital threshold is almost ten times as generous as the A&A equivalent.

23. An individual in receipt of UC will meet the A&A disposable income eligibility criteria, but will not necessarily be eligible for A&A. Due to the large discrepancy in capital thresholds between A&A and UC, individuals in receipt of UC may not be eligible for A&A. However, it seems very unlikely that most individuals in receipt of UC will be able to afford to pay privately for legal advice.

### ***Civil legal aid thresholds***

24. The financial thresholds for civil legal aid are significantly higher than those for A&A. More of the public are eligible for civil legal aid than are eligible for A&A.

25. Section 15(1) of the 1986 Act states that a person, “shall be eligible for civil legal aid if his disposable income does not exceed £26,239 a year”.<sup>10</sup> Section 15(2) states that a person “may be refused civil legal aid if his disposable capital exceeds £13,017”.

### **Conclusion and recommendations**

26. The financial eligibility thresholds for A&A require urgent reform for the following reasons:

- The thresholds are set far below the levels at which an individual in need of legal advice will be unable to afford to pay privately for advice from a solicitor. It is likely that there is a significant proportion of the population in Scotland in need of civil legal advice but unable to afford it.
- The thresholds were set in 2011 and have not been adjusted for inflation since then, meaning that they have been significantly reduced since 2011 in real terms.
- The disposable income threshold is set far below the earnings of a person aged over 21 who works full-time and is paid the national minimum wage.

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<sup>10</sup> Section 15, Legal Aid (Scotland) Act 1986.

- The disposable capital threshold is set far below the equivalent threshold for universal credit.
- The thresholds are set at levels far below the equivalent thresholds for civil legal aid.

27. We recommend that the Scottish Ministers and/or the Scottish Legal Aid Board reviews the financial eligibility thresholds as a matter of urgency. We recommend that the Scottish Ministers make regulations to increase the A&A financial eligibility thresholds to the equivalent financial thresholds for civil legal aid. This would much better support those of limited and average means to obtain legal advice and improve access to justice.